

ORIGINAL

JACK SCHWEIGERT
550 Halekauwila Street, Room 309
Honolulu, Hawaii 96813
Phone: (808) 533-7491

FILED IN THE
UNITED STATES DISTRICT COURT
DISTRICT OF HAWAII

APR 15 2008

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SUE BEITIA, CLERK

Attorney for Defendant
Silver Jose Galindo

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF HAWAII

UNITED STATES OF AMERICA,

Plaintiff,

vs.

SILVER JOSE GALINDO,

Defendant.

CR. NO. 04-00053 DAE

DEFENDANT'S FOURTH
AMENDED PROPOSED JURY
INSTRUCTIONS; CERTIFICATE
OF SERVICE

Trial: April 1, 2008

DEFENDANT'S FOURTH
AMENDED PROPOSED JURY INSTRUCTIONS

COMES NOW DEFENDANT SILVER JOSE GALINDO, by and through counsel,
and respectfully submits Defendant's Fourth Amended Proposed Jury Instructions.

DATED: Honolulu, Hawaii, April 14, 2008.

Respectfully submitted,

By: 

JACK SCHWEIGERT
CJA Panel Attorney for Defendant

DEFENDANT'S FOURTH AMENDED PROPOSED JURY INSTRUCTION #1

Defendant is charged in Count 3 of the Third Superseding Indictment with knowingly carrying and possessing in furtherance of a drug trafficking crime as charged in Count 2, a firearm, to wit a Smith & Wesson, model SW9V, caliber .9 mm semi-automatic pistol, during and in relation to a drug trafficking crime on March 11, 2004, in violation of 18 U.S.C. § 924(c). In order for the defendant to be found guilty of this charge, the government must prove each of the following elements beyond a reasonable doubt:

First, on March 11, 2004, defendant knowingly possessed five grams or more of methamphetamine its salts, isomers and salts of isomers with the intent to distribute this drug.

Second, the defendant knowingly carried and possessed a firearm, to wit: a Smith & Wesson, Model SW9V, caliber .9 mm semi-automatic pistol; and

Third, defendant possessed the firearm in furtherance of a drug trafficking crime.

Carrying is not limited to carrying weapons directly on the person but can include circumstances such as carrying in vehicle. A defendant carries a firearm when he:

- (1) knowingly possesses it; and,

(2) holds, moves, conveys, or transports it some manner.

A person possesses a firearm if a person knows of its presence and has physical control of it, or knows of its presence and has the power and intention to control it.

A person possesses a firearm in furtherance of a drug trafficking crime when the firearm was possessed to advance or promote the criminal activity.

AUTHORITY: U.S. v. Arreola, 457 F.3d 1153, 1159-60 (9th Cir. 2006);
U.S. v. Mosley, 465 F.3d 412, 417 (9th Cir. 2006);
U.S. v. Krouse, III, 370 F.3d 965 (9th Cir. 2004).

GIVEN _____
REFUSED _____
MODIFIED _____
WITHDRAWN _____

DEFENDANT'S FOURTH AMENDED PROPOSED JURY INSTRUCTION #2

Mere proximity to drugs and/or firearms does not establish knowing possession. The government must show some link between the defendant and the firearms and/or drugs.

AUTHORITY: U.S. v. Corral-Gastelum, 240 F.3d 1181, 1184 (9th Cir. 2001); U.S. v. Carrasco, 257 F.3d 1045, 1049 (9th Cir. 2001); U.S. v. Terry, 911 F.2d 272 (9th Cir. 1990); U.S. v. Chambers, 918 F.2d 1455, 1459 (9th Cir. 1990).

GIVEN _____
REFUSED _____
MODIFIED _____

DEFENDANT'S FOURTH AMENDED PROPOSED JURY INSTRUCTION #3

If two conclusions can reasonably be drawn from the evidence, one of innocence, and one of guilt, the jury must adopt the one of innocence.

AUTHORITY: Manual on Jury Instructions in Federal Criminal Cases, 33 F.R.D. 523, 567 (1963); Compton v. U.S., 305 F.2d 119, 120 (9th Cir. 1962).

GIVEN _____
REFUSED _____
MODIFIED _____

DEFENDANT'S FOURTH AMENDED PROPOSED JURY INSTRUCTION #4

You have heard evidence that defendant was intoxicated. "Intoxicated" means being under the influence of alcohol or drugs or both. Some degree of intoxication may prevent a person from having the requisite culpable state of mind. If after considering the evidence of intoxication, together with all the other evidence, you have a reasonable doubt that defendant had the requisite culpable state of mind, then you must find defendant not guilty.

AUTHORITY: Pattern Jury Instructions of the First Circuit, Criminal Cases, Instruction No. 5.03 (1998).

GIVEN _____
REFUSED _____
MODIFIED _____

DEFENDANT'S FOURTH AMENDED PROPOSED JURY INSTRUCTION #5

There was testimony in this case by law enforcement officers. The fact that a witness is a law enforcement official does not mean that his or her testimony is necessarily deserving of more or less consideration or greater or lesser weight than that of another witness. Any witness who takes the stand subjects his or her testimony to the same examination and the same tests as any other witness. You should recall the officer's demeanor on the stand, his or her manner of testifying, and the substance of the testimony. You must weigh and balance that testimony just as carefully as you would weigh the testimony of any other witness.

AUTHORITY:

GIVEN _____
REFUSED _____
MODIFIED _____

DEFENDANT'S FOURTH AMENDED PROPOSED JURY INSTRUCTION #6

Where a residence is jointly occupied, the mere fact that contraband, firearms and/or ammunition are discovered at the residence will not, without more, provide evidence sufficient to support conviction based on constructive possession against any of the occupants.

AUTHORITY: U.S. v. Reese, 775 F.2d 1066 (9th Cir. 1985).

GIVEN _____
REFUSED _____
MODIFIED _____

DEFENDANT'S FOURTH AMENDED PROPOSED JURY INSTRUCTION #7

The law presumes a defendant to be innocent of crime. Thus a defendant, although accused, begins the trial with a "clean slate" -- with no evidence against him. And the law permits nothing but legal evidence presented before the jury to be considered in support of any charge against the accused. So the presumption of innocence alone is sufficient to acquit a defendant, unless the jurors are satisfied beyond a reasonable doubt of the defendant's guilt from all the evidence in the case.

* * * A presumption continues in effect until overcome or outweighed by evidence to the contrary; * * * unless so outweighed by evidence to the contrary, the law presumes that a person is innocent of a crime or wrong; * * * and that the law has been obeyed.

AUTHORITY: Compton v. U.S., 305 F.2d 119, 120 (9th Cir. 1962); Manual on Jury Instructions in Federal Criminal Cases, 33 F.R.D. 523, 568 (1963).

GIVEN _____
REFUSED _____
MODIFIED _____

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF HAWAII

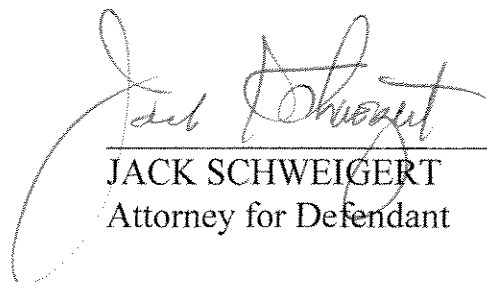
UNITED STATES OF AMERICA,)	CR. NO. 04-00053 DAE
)	
Plaintiff,)	CERTIFICATE OF SERVICE
)	
vs.)	
)	
SILVER JOSE GALINDO,)	
)	
Defendant.)	

CERTIFICATE OF SERVICE

It is hereby certified that on April 15th, 2008, one copy of the attached document was served on the below individual by hand delivery to the following:

DARREN W.K. CHING, ESQ.
Assistant U.S. Attorney
Room 6100, PJKK Federal Building
300 Ala Moana Blvd., Box 50183
Honolulu, HI 96850

Attorney for United States of America



JACK SCHWEIGERT
Attorney for Defendant